United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-6004

In the

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 76-6004

NELLIE T. GOFF
Plaintiff-Appellant

vs.

CASPAR WEINBERGER,
SECRETARY OF HEALTH, EDUCATION AND WELFARE
Defendant-Appellee

On Appeal from the United States District Court
for the District of Connecticut

BRIEF OF PLAINTIFF—APPELLANT

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PRELIMINARY STATEMENT

The decision appealed from was rendered by Judge T. Emmet Clarie on Cross-Motions for Summary Judgment.

STATEMENT OF ISSUES

1. Did the Court below err in not holding that the sworn affidavit of Attorney Bernard Grabowski and the uncontroverted testimony of Nellie Goff are substantial evidence that Nellie Goff was entitled to survivor's insurance benefits under the Social Security Act retroactive to March 31, 1959.

2. Did the Court below err in not holding that the oral inquiry concerning entitlement to survivor's insurance benefits made by Attorney Bernard Grabowski on behalf of Nellie Goff in 1959 constituted an intent to claim survivor's insurance benefits under the Social Security Act.

3. Did the Court below err in not holding that the requirement of a written statement of intent to claim survivor's insurance benefits under the Social Security Act had been properly waived by the Hearing Examiner.

STATEMENT OF CASE

THE PROCEEDINGS BELOW

This is an action under Section 205(g) of the Social Security Act, as amended 42 U. S. C. 405(g) to review a final decision of the Secretary of Health, Education and Welfare denying surviving child's insurance benefits to James Woolley, Patricia Woolley and Jane (Woolley) Turgeon retroactive to March 1959 and mother's insurance benefits to Nellie Goff, retroactive to March 1959. (App. p. 9a).

On January 28, 1971, Mrs. Goff filed a written application for surviving child's insurance benefits and benefits were awarded to James Woolley and Patricia Woolley on April 14, 1971, retroactive to January, 1970. (Record, Exhibit 5, pp. 72-75). A timely request for reconsideration and application of child's insurance benefits was made for James Woolley and Patricia Woolley from March 1959, child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969, and mother's insurance benefits for herself from March 1959 to November 1962. (Record, Exhibit 10, pp. 82-85). On May 9, 1973, Bernard Levine, chief of the reconsideration branch, affirmed the initial determination. (Record, Exhibit 11, pp. 86-87).

Mrs. Goff appealed the reconsideration determination to the Bureau of Hearings, and a hearing was held on December 19, 1973. (Record, Exhibit 12, pp. 88-92). On March 11, 1974 the Administrative Law Judge awarded child's insurance benefits to James and Patricia Woolley effective as of March 31, 1959, child's insurance benefits to Jane (Woolley) Turgeon from March 31, 1959 to May, 1969, and mother's insurance benefits to Mrs. Goff from March 31, 1959 to November 1962. (App. p. 24a).

On April 2, 1974, the Appeals Council, on its own Motion, decided to review the Administrative Law Judge's decision. (App. p. 17a). On July 22, 1974, the Appeals Council overruled the decision of the Administrative Law Judge and awarded child's insurance benefits to James and Patricia Woolley retroactive to January, 1970. (App. pp. 9a-16a). On September 11, 1974, Mrs. Goff appealed this decision to the United States District Court for the District of Connecticut. (Record, Complaint) On October 6, 1975, the Court heard argument on Cross-Motions for Summary Judgment and in its ruling dated October 17, 1975, the Court granted the Defendant's Motion for Summary Judgment. (App. p. 9a). Judgment was entered accordingly on November 28, 1975. (Record, Judgment)

STATEMENT OF FACTS

The Plaintiff's husband, Clayton Woolley, died suddenly in a tragic accident on March 31, 1959. (Record, Exhibit 15, p. 95). Besides his widow, Nellie T. Goff, he left three children, namely: James Woolley, born February 3, 1953, Patricia Woolley, born October 19, 1955 and Jane (Woolley) Turgeon, born June 1, 1949, married during May 1969. (Record, Exhibit 5, pp. 72-75). As the wage earner for the family, Clayton Woolley was fully insured under the Social Security Act at the time of his death. (Record, Exhibit 7, p. 77).

Mrs. Goff sought the advice of her attorney, Bernard Grabowski, relative to eligibility for Social Security Benefits for her and her children. The attorney, and later United States Representative, advised her that neither she nor her children were eligible for Social Security Benefits. He had inquired via telephone to the Social Security Office in New Britain, Connecticut and was advised that since she and her children were receiving Workmen's Compensation Benefits, neither she nor her children were entitled to Social Security Benefits. (App. pp. 27a-30a).

Mrs. Goff made no further inquires relative to Social Security Benefits until 1970. Mrs. Goff was told again by her attorney, then former United State Congressman, that she and her children were not eligible for benefits. In 1971, after hearing a public information announcement on the radio, on her own, she learned that she and her children were, in fact, entitled to Social Security Benefits and should have been receining benefits from March 1959. (Record, Transcript, TR pp. 10-15). On January 28, 1971, the Plaintiff filed a written application for surviving child's insurance benefits. (Record, Exhibit 5, pp. 72-75). Pursuant to that application, benefits were awarded to James Woolley and Patricia Woolley on April 14, 1971, retroactive to January 1970. (Record, Exhibit 6, p. 76). Later, for good cause shown, the two year limit for lump sum death benefits was waived and payment was made.

A timely request for reconsideration and an application for child's insurance benefits was made for James Woolley and Patricia Woolley from March 1959, child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969, and mother's insurance benefits for herself from March 1959 to November 1962, at which time Nellie Goff married her present husband. (Record, Exhibit 10, pp. 82-85). On May 9, 1973, Bernard Levine, Chief of the Reconsideration Branch, affirmed the initial determination and allowed child's insurance benefits for James and Patricia Woolley retroactive to January 1970, but denied child's insurance benefits to Jane

(Woolley) Turgeon and mother's insurance benefits to the Plaintiff. (Record, Exhibit 11, pp. 86-87).

The Plaintiff appealed the reconsideration determination to the Bureau of Hearings and requested a hearing before an Administrative Law Judge. (Record, Exhibit 12, pp. 88-92). The hearing was held on December 19, 1973. Attorney Grabowski informed Judge Bennett in a letter addressed to him dated January 3, 1974, that he did, in fact, contact the Social Security Office in New Britain, Connecticut to inquire as to the eligibility of the Plaintiff and her children for Social Security Benefits. (App. p. 27a). On March 11, 1974, the Administrative Law Judge filed his decision giving benefits. He awarded child's insurance benefits to James and Patricia Woolley effective as of March 31, 1959 and child's insurance benefits to Jane (Woolley) Turgeon from March 31, 1959 to May 1969, and mother's insurance benefits were allowed to the Plaintiff from March 31, 1959 to November 1962. (App. p. 19a).

The Appeals Council, on its own Motion, on April 2, 1974, notified the Plaintiff of its decision to review the Administrative Law Judge's decision. (App. p. 17a). On July 22, 1974, after a hearing had been held, the Appeals Council overruled the decision of the Administrative Law Judge and awarded child's insurance benefits to only James and Patricia Woolley retroactive to January 1970. (App. p. 9a). From that decision the Plaintiff appealed to the United State District Court for the District of Connecticut on September 11, 1974. (Record, Complaint). On October 6, 1975, argrument was heard on Cross-Motions for Summary Judgment, and in its ruling dated October 17, 1975, the Court granted the Defendant's Motion for Summary Judgment, (App. p. 3a) and Judgment was entered accordingly on November 28, 1975. (Record, Judgment).

ARGUMENT

A. THE COURT BELOW ERRED IN NOT HOLDING THAT THE SWORN AFFIDAVIT OF ATTORNEY BERNARD GRABOWSKI AND THE UNCONTROVERTED TESTIMONY OF NELLIE T. GOFF WERE SUBSTANTIAL EVIDENCE THAT NELLIE T. GOFF WAS ENTITLED TO SURVIVOR'S INSURANCE BENEFITS UNDER THE SOCIAL SECURITY ACT RETROACTIVE TO MARCH 31, 1959.

Section 205(g) of the Social Security Act as amended, 42 U. S. C. 405(g), states in part, "That the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive." Substantial evidence has been defined to be evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It is more than a mere scintilla of evidence that may be less than a preponderance. **Laws v. Celebrezze,** 368 F. 2d 640 (1966). If the Secretary's findings are supported by substantial evidence the Court must affirm the Secretary's decision. **Widermann v. Richardson,** 451 F. 2d 1228 (1971). If the Court finds there is substantial evidence to support the Secretary's decision then the Court's inquiry must end. However, the Court's function is not to determine the weight of the evidence or substitute its judgment for the Secretary's if there is substantial evidence **Laws v. Celebrezze, supra.** The Court may not substitute its own factual findings for those of the Referee. **Foster v. Flemming,** 190 F. Supp. 908. (1960). In essence, the Court may not try the case de novo if the Secretary's findings are supported by substantial evidence. **Flack v. Cohen,** 413 F. 2d 278 (1969), **Byrd v. Richardson,** 362 F. Supp. 957 (1973), **Branch v. Finch,** 313 F. Supp. 337 (1970).

However, this does not mean that findings of an administrative agency must be blindly accepted. The statutorily granted right of review contemplates more than an uncritical rubber stamping of the administrative action. **Flack v. Cohen, supra.** The **Flack** case mandated a critical and searching ex-

amination of the record, and called for a setting aside of the Secretary's decision where necessary "to insure a result consistent with congressional intent and elemental fairness." **Flack, supra, Byrd v. Richardson, supra.** The Court has a duty to review and determine on the record as a whole whether there is substantial evidence to support the Secretary's findings of fact. **Crooks v. Ribicoff,** 202 F. Supp. 566 (1961). Although the statute does limit the scope of review of an administrative decision to the record presented to it on appeal, it in no way limits the depth to which the Court may probe the entire record.

In the present case, the Administrative Law Judge disagreed with both the initial and reconsidered opinions and found that the inquiry made by former Congressman Bernard Grabowski, "constituted an intent to claim all Social Security Benefits which might be due the Claimant and to each of the three children, and that said statement of intent . . . was revived as soon as the Claimant had reason to believe such an error may have been made." (App. p. 23a). The administrative Law Judge found that the purpose of Section 404.613 of the Social Security Regulations, 20CFR404.613, had been fully satisified, and therefore, the written requirement was waived. (App. p. 23a). This finding by the Administrative Law Judge was supported by substantial evidence. The Administrative Law Judge had the opportunity to observe and hear the Plaintiff at the hearing, and this in itself is a kind of evidence. (Record, Transcript, pp. 35-55). **Crooks v. Ribicoff, supra, Remington v. Folsom,** 157 F. Supp. 473 (1967).

Nellie T. Goff stated that at the time of her husband's untimely death she was confused, unstable and in her words "shook-up". (Record, Transcript, Tr. p. 8). Her sister's husband was the Administrator of her husband's Estate. She sought the aid and advice of Attorney Grabowski who assisted in handling her husband's Estate. (Record, Transcript, Tr. p. 8). Attorney Grabowski advised her that neither she nor her children were eligible to collect Social Security Benefits

as long as they were receiving Workmen's Compensation Benefits. (Record, Transcript, Tr. p. 8). In 1971, only after hearing a public information advertisement, she and her then husband, Joseph Goff, were advised by the Social Security Office that she and her children were entitled to Social Security Benefits, and had been so entitled since March 1959. (Record, Transcript, Tr. pp. 10-15).

Nellie T. Goff told Attorney Grabowski that she and her children had been entitled to Social Security Benefits since March, 1959, but he still did not believe she was entitled to any Social Security Benefits. (Record, Transcript, Tr. pp. 10-15). By letter to the Administrative Law Judge and by sworn Affidavit, Attorney Grabowski corroborated Mrs. Goff's testimony that he had made a telephone inquiry at the New Britain, Connecticut Social Security Office in 1959 on behalf of Nellie T. Goff. He stated that a Social Security employee told him that neither the Plaintiff nor her children were entitled to Social Security Benefits because the Plaintiff was receiving Workmen's Compensation Benefits. (App. p. 27a and p. 30a). Accordingly, he related this information to the Plaintiff.

Administrative Law Judge Thomas Bennett found these facts. He properly applied the law to them. The record is supported by substantial evidence. Therefore, this Court is obliged to determine that the factual findings of the Administrative Law Judge are supported by substantial evidence, and that he properly interpreted and applied the law to the facts. **Foster v. Fleming, supra.** The Appeals Council, on its own Motion, reversed the Hearing Examiner's decision and reinstated the initial and reconsidered opinions. (App. p. 17a and p. 9a). However, the Appeals Court did not hear new evidence or offer evidence to refute the facts found by the Hearing Examiner. Therefore, the findings of the Hearing Examiner should be given greater weight than those of the Appeals Council. **In re United Corporation,** 249 F. 2d 168 (1957),

The Administrative Law Judge after observing and hearing the Claimant and examining the letter from Attorney Grabowski, reasonably and logically arrived at the proper conclusion in light of the beneficial intent of the Act and the principle that the Act should be construed liberally in favor of a party seeking its benefits. **Haberman v. Finch,** 418 F. 2d 664 (1969), **Branch v. Finch, supra.** The Appeals Council wrongfully overruled the Administrative Law Judge since there was no "gross abuse of discretion" and his decision was with the manifest weight of the evidence. **Universal Camera Corporation v. National Labor Relations Board, supra., Mynheir v. Richardson, supra.**

The Secretary's findings of law are not conclusive. **Pellerin v. Celebrezze,** 226 F. Supp. 176 (1964). However, the Secretary's interpretation must be reasonable. **Drafts v. Celebrezze,** 240 F. Supp. 535 (1965). If the Appeals Council's conclusions have an unreasonable basis in law and an improper legal significance, they must be set aside. **Kosnosky v. Richardson, supra., Byrd v. Richardson, supra., Vitek v. Finch,** 438 F. 2d 1157 (1971). It is respectfully submitted that the Appeals Council's conclusions in the present case have an unreasonable basis in law and an improper legal significance in light of the beneficial intent of the Social Security Act. Also, the Appeals Council did not make its own findings of fact, but accepted the findings of the Hearing Examiner. It is true that the Appeals Council is not limited to the Hearing Examiner's appraisal of the evidence, but may make its own appraisal thereof, to be evidenced by its own findings of fact. **Graham v. Ribicoff,** 295 F. 2d 391 (1961). This the Appeals Council did not do in this instance. Therefore, a critical and searching examination of the record requires that the Secretary's decision be corrected to insure a result consistent with congressional intent and elemental fairness. **Byrd v. Richardson, supra.**

B. THE COURT BELOW ERRED IN NOT HOLDING THAT THE ORAL INQUIRY CONCERNING ENTITLEMENT TO SURVIVOR'S INSURANCE BENEFITS MADE BY ATTOR-

NEY BERNARD GRABOWSKI ON BEHALF OF NELLIE T. GOFF IN 1959 CONSTITUTED AN INTENT TO CLAIM SURVIVOR'S INSURANCE BENEFITS UNDER THE SOCIAL SECURITY ACT.

The Administrative Law Judge carefully considered the purpose and intent of the Social Security Act. The Act has a beneficial intent and is remedial, therefore it should be broadly construed and liberally applied. **Haberman v. Finch, supra.** The Act should be construed liberally in favor of a party seeking its benefits. **Branch v. Finch, supra.** The Court in **Drafts v. Celebrezze, supra,** construing eligibility for disability benefits under the Act, stated that:

> "The broad purpose of the Act requires a liberal construction in favor of disability if same is reasonably made out. The intent is inclusion rather than exclusion."

Section 205(a), 42 U. S. C. 405(a), provides in part: "The Secretary shall have full power and authority to make rules and regulations . . . , not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions . . . " Pursuant to this authorization, Social Security regulation 404.613, 20 CFR 404.613, requires an application for benefits to be in writing. This regulation should not be construed to thwart the beneficial nature of the Act itself, but should be construed liberally to include all **bona fide** claims rather than to exclude such claims. Applying these guidelines of construction to the Act and the regulations made pursuant thereto, Administrative Law Judge, Thomas E. Bennett, considered the beneficial nature of the Act when he stated as the purpose of Regulation 404.613, 20 CFR 404.613 the following:

> "The purpose of that Section 404.613 is to provide a flexibility in giving effect to the congressional intent that persons having a bona fide claim shall not be denied that claim merely because of a failure to satisfy the technicalities irrespective of how necessary for the orderly processing of the great mass of paper work in-

> volved in the administration of the Social Security Act. In formulating Section 404.613, as a practical matter, it was recognized that only a written expression or indication of intent to claim Social Security Benefits should be accepted as being an application for such benefits because oral statements and responses thereto tend to be ambiguous and subject to gross misunderstanding even though everyone involved is acting in great good faith. Thus, the purpose of requiring that the statement be in writing is that a reasonable degree of certainty as to facts be established before determinations are made pursuant to which substantial payments will be made out of the Social Security trust funds." (App. p. 21a).

Failure to satisfy the technicality of a written application should not prevent the claimant from receiving Social Security Benefits if the intent is satisfied. The claim for death benefits commencing in March 1959 is not open to ambiguity or subject to "gross misunderstanding". This claim is not based merely on the self-serving statement of the Claimant alone, but is fully corroborated and substantiated by the letter and affidavit of Attorney Grabowski. The corroboration by Attorney Grabowski, along with other circumstances, brings the present case within the holding of **Tuck v. Finch,** 430 F.2d 1975 (1970)

In **Tuck** the Court found that the use of a written application form is not mandatory and its absence does not conclusively establish that an application was not made. Although the case involved an application for disability under 205(c)(5)(A), 42 USC 405(c) (5) (A) rather than entitlement under Sections 202(d) and 202(g) of the Act, 42 USC 402(d), 402(g), the principles of construction in **Tuck** are applicable in the present case. The question in Tuck was whether an unwritten, informal application satisfied the Statute. The Court held that the oral request for benefits was an application for monthly benefits. The Court said on page 1077 as follows:

> "The Secretary has prescribed application forms for disability insurance benefits. 20 C. F. R. 422.501 and .505. Ordinarily an application made on the form will conclusively establish the date it was filed. Use of a

> form, however, does not appear to be mandatory, and its absence does not conclusively establish that an application was made, especially when the Applicant is illiterate. Here the Secretary's own records affirmatively show that in February 1965, Tuck "asked about receiving Social Security Benefits" and that an official of the Social Security Administration discussed his application with him. While a written application might be expected from a literate person, an illiterate often can do little other than make an oral request to the official to whom he has been referred."

The Court in **Tuck** was considering the case of **Roy v. Gardner,** 387 F. 2d 162, wherein there had been a finding that a claim for disability benefits had not been filed. In the **Roy** case the Court pointed out that there was unsubstantiated testimony of the Claimant. The Court stated:

> "The fact that no such claim was to be found in the records of the Social Security Administration and that there was no notation of the receipt or filing of any such claim, if not conclusive, furnish substantial evidence in support of the finding. The fact finder was not bound to accept the self-serving testimony of the Claimant and his wife, otherwise unsubstantiated, to the contrary."

The Court in **Tuck** distinguished the **Roy** case by stating that in **Tuck** the Secretary's records corroborated **Tuck's** claim. Therefore,corroboration of the Claimant's oral inquiry in **Tuck** was the rationale for the Court holding. In **Tuck** the corroboration was accidentally a written record of the Claimant's oral inquiry made by a Social Security employee. In the present case, the Claimant's oral inquiry is meaningfully corroborated by Attorney Grabowski. By correspondence and by signed Affidavit, he vividly attests to the fact that he did make an oral inquiry at the New Britain, Connecticut Social Security Office on behalf of the Claimant. (App. pp. 27a & 30a).

A careful reading of **Tuck** indicates the wisdom and correct judgment of the Administrative Law Judge, Thomas E.

Bennett, in finding that the inquiry by former Congressman Grabowski, if it had been in writing, would have been deemed to be a statement of intent thus entitling benefits in this case. (App. p. 23a). Using the principles of construction in **Tuck** and the other cases cited herein, the Administrative Law Judge properly interpreted and applied the law to Social Security Regulation 404.613, 20 C F R 404.613. He logically and reasonably concluded that the inquiry made by Congressman Grabowski constituted a statement of intent to claim benefits under the Social Security Act. Thus, the purpose of Social Security Regulation 404.613 having been fully satisfied in this case, the Administrative Law Judge waived the written requirement.

C. THE COURT BELOW ERRED IN NOT HOLDING THAT THE REQUIREMENT OF A WRITTEN STATEMENT OF INTENT TO CLAIM SURVIVOR'S INSURANCE BENEFITS UNDER THE SOCIAL SECURITY ACT HAD BEEN PROPERLY WAIVED BY THE HEARING EXAMINER.

An Administrative Law Judge has the power and authority to make decisions. United State Code, Title 5, Section 556(c)(8). In this case, Administrative Law Judge Thomas Bennett made a decision. He decided that the purpose of Social Security Regulation 404.613, 20 C F R 404.613, in requiring statements of intent to claim benefits under the Social Security Act be in writing was fully satisfied; and therefore, the written requirement was waived. (App. p. 23a). In accordance with this decision, Judge Bennett allowed child's insurance benefits to James and Patricia Woolley effective as of March 31, 1959; allowed child's insurance benefits to Jane (Woolley) Turgeon effective as of March 31, 1959 to May 1969; and allowed mother's insurance benefits to the Plaintiff, Nellie T. (Woolley) Goff, from March 31, 1959 to November 1962. (App. p. 24a). Judge Bennett's decision was predicated on the belief that had former Congressman Grabowski's oral inquiry at the Social Security Office in New Britain, Connecticut been made in

writing, it would have been considered to be a statement of intent to file application for mother's insurance benefits and child's insurance benefits for Nellie T. Goff and her children. (App. p. 23a). In other words, the oral inquiry by former Congressman Grabowski, if reduced to writing, for all practical purposes would have constituted an application for these benefits.

The waiving of technical requirements, such as the requirement that statements of intent be in writing, is not unique to this case or within the framework of the Social Security Act itself. Section 402(i) of the Social Security Act provides for lump-sum death payments. However, this Section clearly states that no payment shall be made to any person under this subsection unless application therefor shall have been filed prior to the expiration of two years after the date of death of the insured individual. 42 U. S. C. 402(i). However, Section 402(p) mitigates the harsh results that might occur from the two-year limitation. This Section considers an application filed after the expiration of the two-year period to be deemed to have been filed within such period, if there is good cause shown for the failure to file the application within the two-year period.

This exception or waiver of the timely written requirement found application in this case. In a letter dated July 29, 1971, to the Social Security Office in New Britain, Connecticut, Nellie T. Goff asked for payment of the lump-sum death benefit, although her husband, Clayton Woolley, had died in 1959. (App. p. 25a). As Mrs. Goff stated in her letter, "I think that since I haven't received help all these years, that I am entitled to at least the lump-sum." (App. p. 26a). She also stated that she was in a state of shock when her husband died and that she had sought the help of Attorney Bernard Grabowski. Attorney Grabowski told her that since she was receiving help from the State, that is, Workmen's Conpensation Benefits, she was not entitled to Social Security Benefits, and it was for these reasons she had not applied. (Record, Transcript Tr. pp. 10-15).

The Social Security Administration found good cause, and allowed Mrs. Goff to collect the lump-sum death benefit. It is an anomaly that the Social Security Administration found good cause to waive the two-year limitation for applying for lump-sum death benefits, but could not find good cause to support Judge Bennett's waiver of the requirement that an intention to claim benefits be in writing.

In view of the beneficial intent of the Social Security Act, and since the statute is remedial, it should be broadly construed. **Haberman v. Finch, supra.** The Act should be construed liberally in favor of a party seeking its benefits. **Branch v. Finch, supra.** The Court in **Drafts v. Celebrezze, supra,** construing eligibility for disability benefits under the Act, stated that "The intent is inclusion rather then exclusion." Therefore, the interpretation to be given the Social Security Act should be one which gives effect to its beneficent purposes.

In **Tuck v. Finch, supra,** by finding an application form was not necessary to conclusively establish that an application for disability insurance benefits had been filed, the Court in effect waived the application form requirement. In **Tuck** the applicant was illiterate and his oral inquiry was corroborated by a written record. It was these mitigating circumstances along with the beneficial intent and purpose of the Act which resulted in the Court's waiving the formal application.

In **Schmiedigen v. Celebrezze,** 245 F. Supp. 825 (1965) in construing old-age insurance provisions and more particularly Section 404.1112, 20 CFR 404.1112, the Court waived the requirement that a surviving spouse be living in the same household with the deceased at the time of death. Here, the surviving widow was confined to a mental institution, and therefore, was not technically "living in the same house or with the deceased at the time of death". After payments had been denied to the surviving spouse by the Social Security Administration, the Court reversed the Administration's decision and stated:

> "That an exception for mentally incompetent persons must be carved out of the requirement that in order to be entitled to the lump-sum death payment an insured person and the surviving spouse must have been living in the same household at the time of death." Pg. 827)

Once again because of mitigating circumstances, the Court waived a formal technicality of the Social Security Act. In doing so the Court stated:

> "If a strict, literal interpretation would frustrate the objective of the legislative body and would lead to an absurd or futile result, it must be avoided. Necessary or obvious exceptions may be implied in statutory provisions in order to attain the desired end, on the theory that to do so would be carrying out the intention of the legislative body." (Pg. 827)

In **Ewing v. Black,** 172 F. 2d 331 (1949), despite statutory language that wage records were "conclusive" after the expiration of four years, the Court allowed admission of records beyond the four-year period. Here the applicant had no knowledge of his employer's failure to report wages. Also, the Court found that there were no attending "suspicious circumstances" to alert the applicant of the employer's failure to report the wages. Thus, the beneficial purposes of the Social Security Act were carried out by the Court.

In a real sense, the right to Social Security Benefits is earned. The scheme is predicated from the fact that those individuals in their productive years may be called upon to contribute so that in later years they may be protected from personal hazards and social problems which often attend old age and disability. In the last analysis, it is clear that the Social Security Act was adopted and designed for the protection of society and enacted to alleviate the burdens which rest on large numbers of the population because of the insecurities of modern life. **Ray v. Social Security Board,** 73 F. Supp. 58, (1947) **U. S. vs. Silk,** 67 S. CT. 1463. (1946).

Clayton Woolley, Nellie T. Goff's husband, died fully insured. (Record, Exhibit p. 77). This means that Clayton Woolley paid premiums for this insurance. These premiums were paid by way of deductions from his wages. As one fully insured during his work years, Clayton Woolley paid his fair share. Therefore, payments to his widow and surviving children are not gifts or charitable payments, but benefits due them which were paid for by the insured. In commenting on this aspect of the Social Security Act the Court in **Schmiedigen, supra,** stated:

> ". . . it must be borne in mind that the payments prescribed by (the provisions of the Social Security Act) are not gratuities or matters of grace; they are not public assistance; they are not welfare payments. . . . In spirit at least, if not strictly and technically the employee, who throughout his working life has contributed from his wages or salary should be deemed to have a vested right to the payments prescribed by the statutory scheme. . . . He has earned the benefits; he is not receiving a gift. . . . If that payment is not made, the money lapses into the treasury. It would seem fair and equitable, therefore, to place a liberal and broad construction upon these provisions of law, in order to prevent such a frustrating and unjust result." (p. 827)

It is submitted that the decision of the Administrative Law Judge is fair, right and equitable in view of the entire record. The Claimant could not be expected to have done any more to protect her rights. The untimely loss of her husband, leaving her widowed and with three minor children to care for, necessarily required the employment of an attorney for assistance. This was done by the Claimant. She inquired of her attorney as to eligibility for Social Security and his advice satisfied her as it should a woman of her educational background. To hold contrary to the equitable decision of Administrative Law Judge, Thomas E. Bennett, would be clearly against the intent and purpose of the Social Security Act.

CONCLUSION

The judgment of the Court below should be reversed and child's insurance benefits allowed to James and Patricia Woolley effective as of March 31, 1959; child's insurance beneits allowed to Jane (Woolley) Turgeon from March 31, 1959 to May 1969; and mother's insurance benefits allowed to the Plaintiff, Nellie T. (Woolley) Goff, from March 31, 1959 to November 1962 in accordance with the decision of the Administrative Law Judge.